



OFFICE OF THE POLICE COMMISSIONER  
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December 18, 2019

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Kevon Sample**  
Tax Registry No. 935679  
19<sup>th</sup> Precinct  
Disciplinary Case No. 2018-18426

The above named member of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on June 20, 2019, and was charged with the following:

**DISCIPLINARY CASE NO. 2018-18426**

1. Lieutenant Kevon Sample, on or about June 29, 2017, at approximately 1714, while assigned to 019 PCT and on duty, in the vicinity of Madison Avenue and East 81<sup>st</sup> Street, New York County, wrongfully used force, in that he pushed Samuel Williams without police necessity.

**P.G. 221-02, Page 2, Prohibition 11**

**USE OF FORCE**

In a Memorandum dated July 29, 2019, Assistant Deputy Commissioner Nancy R. Ryan found the Respondent Guilty of the sole specification in Disciplinary Case No. 2018-18426. Having read the Memorandum and considered the entire record in this matter, including the video evidence, I disapprove the Guilty finding for Lieutenant Kevon Sample.

While I agree with Assistant Deputy Commissioner Ryan that the pushes Lieutenant Sample used to move the individual were an acceptable level of force, I disagree with the findings that the two pushes while traffic was moving were unacceptable. The video evidence demonstrates that the traffic was moving at an extremely slow pace and that at no time was the individual in any danger of being struck. Further Lieutenant Sample moved with the individual to the opposite side of the street ensuring that the individual was not in harm's way. Therefore, I find Lieutenant Kevon Sample Not Guilty of the sole specification against him.

Dermot F. Shea  
Police Commissioner

FIRST DEPUTY COMM.  
REC'D DEC 19 2019 9:37



POLICE DEPARTMENT

July 29, 2019

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2018-18426
Lieutenant Kevon Sample	:	
Tax Registry No. 935679	:	
19 <sup>th</sup> Precinct	:	

-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Jonathan Fogel, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For the Respondent: James Moschella, Esq.  
Karasyk & Moschella, LLP  
233 Broadway, Suite 2340  
New York, NY 10279

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS

1. Lieutenant Kevon Sample, on or about June 29, 2017, at approximately 1714, while assigned to 019 PCT and on duty, in the vicinity of Madison Avenue and East 81<sup>st</sup> Street, New York County, wrongfully used force, in that he pushed Samuel Williams without police necessity.  
PG 221-02, page 2, Prohibition 11 USE OF FORCE

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 20, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Civilian Complaint Review Board called Samuel William as its witness. Respondent called Police Officer Jesus Reyes and Detective Michael Lombardi and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty and recommend a penalty of a Reprimand.

## ANALYSIS

It is undisputed in this case that on June 29, 2017, there was a wake being held for the rapper Prodigy at the Frank Campbell Funeral home located on the northwest corner of Madison Avenue and East 81<sup>st</sup> St. There are two entrances to the funeral home. One is on the west side of Madison Avenue between 81<sup>st</sup> and 82<sup>nd</sup> Streets and the other is on the north side of East 81<sup>st</sup> Street.

Police Officer Jesus Reyes, Community Affairs Detective Michael Lombardi, and Respondent all worked the Prodigy funeral detail that day. The police had set up barricades along Madison so that the line to enter the funeral home started on Madison and went around to

the 81<sup>st</sup> Street entrance. By all accounts huge crowds were gathered outside the funeral home. Samuel Williams was one of the people who came to attend the wake. After he left the funeral home, he had an encounter with Respondent. Mr. Williams claims that Respondent unnecessarily pushed him across Madison Avenue while traffic was moving along the street. Respondent contends that he guided Mr. Williams across Madison Avenue and that his brief use of force was necessary to maintain crowd control.

Mr. Williams appeared at trial. He testified that when he arrived at the funeral home around 2:00 PM, there was a huge crowd gathered outside. He estimated there were more than 1,000 people on the line. (Tr. 18, 32-34) Mr. Williams, who had mutual friends with the deceased, was by himself, and waited on the line about two hours and 45 minutes before getting inside the funeral home. (Tr. 32) While waiting on line, Mr. Williams observed a community affairs officer (Detective Lombardi) who was controlling access to the funeral home for approximately 20 or 30 minutes. He described this officer as acting "passively aggressively" and putting his hands on people. (Tr. 34-35) Mr. Williams thought the officer should not have been using his hands to touch people. (Tr. 36) When Mr. Williams got to the entrance, he told the community affairs officer he should talk with his mouth and not his hands. Mr. Williams then entered the funeral parlor. (Tr. 37)

Mr. Williams testified that at about 5:00 PM he exited the funeral home on East 81<sup>st</sup> Street as the officers were clearing out the area. There was still a huge crowd outside the funeral home. Mr. Williams saw police officers moving barricades around and he wondered how the police were going to disperse all the people. Mr. Williams understood at that point that the police wanted the crowd to disperse but he did not leave and went to stand across 81<sup>st</sup> Street to wait for a friend for 10 to 15 minutes. Two officers started to approach him and as he took his

camera out to record, one of the officers who had an "aggressive approach" to him tried to swipe the camera out of his hand and push him towards the southwest corner of 81<sup>st</sup> and Madison. The officer told him he had to keep moving. Mr. Williams was upset and agitated and asked the officer why he was pushing him. Mr. Williams testified that the officer who had pushed him asked him to cross over to the northwest side of Madison and 81<sup>st</sup> Street. He further testified that he was pushed from one side of 81<sup>st</sup> Street to the other side of it. As Mr. Williams crossed from the southwest corner where there were five to ten people to the northwest corner where he saw hundreds of people, he was greeted by the Respondent about three quarters of the way across the walkway. Respondent initially told him he had to go. Mr. Williams did not move. Mr. Williams testified that Respondent told him if he did not go now, he would push him into the street and that he did not care if there is traffic moving. Mr. Williams told the Respondent he could not push him into the street. A car stopped and the driver said he was not going to hit Mr. Williams. Respondent told the driver to mind his own business and to go. At this point, according to Mr. Williams, while Mr. Williams was still on the sidewalk, Respondent grabbed him by the upper arm along the right elbow and began to push him in front of the car. The same driver then hit his brakes and asked Respondent what he was doing to which Respondent replied that he should mind his own business. Traffic was still proceeding up Madison when Respondent pushed Mr. Williams a second time. Mr. Williams testified that Respondent shoved him with both hands to his back to the middle of the street where a taxicab and car had to stop abruptly. Mr. Williams testified that he turned around to face Respondent at this point in order to keep his balance and to keep from hitting a car. He further testified that at the time there was a light indicating for pedestrians not to cross Madison and that there were no pedestrians in front of him in the street. (Tr. 18-23, 38, 40-41, 48-50, 53-55, 60, 67-69, 76, 80)

He said he felt, "a little bit for my life." After Mr. Williams testified that when he was on the east side of Madison Avenue, Respondent invited him to cross back over Madison to the northwest corner to fight him and that Respondent said, "Do you want to cross? Do you want to shake with me? I dare you to cross the street." Respondent did not follow Mr. Williams onto the sidewalk on the east side of Madison. While Mr. Williams was on the east side of Madison, words were exchanged between him and the community affairs officer and Mr. Williams was arrested for disorderly conduct. He received an ACD for the charges. Mr. Williams presently has a civil lawsuit pending based on this incident. (Tr. 23-24, 75, 79, 86-89)

Police Officer Jose Reyes testified that while he was assigned to crowd control at the funeral at approximately 5:00 PM, he was trying to get people to move either south or east of the funeral home. He saw Officer Hernandez having an altercation with a man (Mr. Williams) on the southwest corner of 81<sup>st</sup> and Madison. Officer Hernandez was telling the man to leave and Mr. Williams was not leaving. Officer Reyes described Mr. Williams as being "extremely belligerent," and not wanting to walk away from the southeast corner of Madison and 81<sup>st</sup> Street. Officer Reyes told Mr. Williams to move and to keep walking. He saw Mr. Williams heading east to cross the street and Officer Reyes resumed crowd control. He never directed Mr. Williams to go to the northwest corner of 81<sup>st</sup> and Madison and neither he nor Officer Hernandez pushed Mr. Williams towards the north side of 81<sup>st</sup>. (Tr. 94-98) Somewhat later, Officer Reyes saw Mr. Williams on the northwest corner of 81<sup>st</sup> and Madison. He does not know how he got there. When he saw him, Mr. Williams was yelling and waving his hands. A few seconds later he saw Respondent, a few officers, and Mr. Williams crossing Madison from the west to the east side. From where he was standing on the southwest corner of 81<sup>st</sup> and Madison he did not see Respondent push Mr. Williams. There were cars and people between where he was and where Respondent and Mr. Williams were. (Tr. 99-101)

Detective Michael Lombardi testified that he was the community affairs officer assigned to the funeral. At some point he was located by the 81<sup>st</sup> Street entrance to the funeral home. After the people left the funeral home they were directed to head to the south side of 81<sup>st</sup> and then to go east to the east side of Madison. (Tr. 113-116) When Detective Lombardi was on the west side of Madison he noticed a male (Mr. Williams) on the southwest corner of 81<sup>st</sup> and Madison, who was "extremely agitated, yelling at police officers, cursing." (Tr. 118-19) He saw Officers Reyes and Hernandez trying to guide Mr. Williams towards Madison Avenue. He saw Mr. Williams heading east. He never saw Officers Reyes or Hernandez push Mr. Williams northbound on Madison. There were still "well over a hundred" people on the northwest corner of 81<sup>st</sup> and Madison at this time. (Tr. 120-22) Detective Lombardi went north to about mid-block on Madison and escorted a large group of pedestrians from the west side to the east side of Madison. There were officers in the street and the traffic on Madison was extremely slow if moving at all. (Tr. 123-24) Detective Lombardi never saw any interaction between Respondent and Mr. Williams crossing Madison. After he escorted people across Madison, Detective Lombardi saw Mr. Williams on the east side of Madison again cursing and yelling and attracting a crowd around him. Detective Lombardi approached Mr. Williams, touched him on his right elbow and asked him if he would mind going. Mr. Williams started screaming at him about his touching people all day. Respondent and other officers then came and arrested Mr. Williams. (Tr. 124-28)

Respondent testified he took over as the day patrol supervisor and responded to 81<sup>st</sup> and Madison at about 10:00 AM. He described the police presence at the funeral home as minimal for the purpose of crowd control. (Tr. 137) After the funeral home personnel told Respondent that the viewing was closing at 5:00 PM, he instructed his officers to get the crowd to go south on Madison or east on Madison so they could clear the area by the funeral home. Respondent

observed a couple of his officers encountering Mr. Williams on the southwest corner of Madison and 81<sup>st</sup>. Mr. Williams was being loud and belligerent and not listening to the orders of the officers. (Tr. 138-40) After having his attention diverted elsewhere for a short time, Respondent next saw Mr. Williams standing stationary on the northwest corner of 81<sup>st</sup> and Madison.

Respondent approached Mr. Williams and told him he couldn't stand on that corner and had to move on. There were about 150-200 people on the corner and they were moving along but Mr. Williams was not moving. Mr. Williams told Respondent, "It's a free country. I can stand wherever I want to stand. You can't do anything to me." Respondent again told Mr. Williams he can't stand on that corner and he had to move but Mr. Williams still refused to go. At that point, Respondent placed his hand on Mr. Williams's right arm and proceeded to push him towards the east side of Madison Avenue. Respondent testified that his main objective was to get the crowd to disperse. (Tr. 141-44) As he was trying to get Mr. Williams across Madison, Respondent had his hands on Mr. Williams's back. At that point, Mr. Williams tensed up and pushed his weight back towards Respondent so Respondent had to use more force to get him across the street.

Respondent described Mr. Williams as spinning and turning toward him after he put his two hands on him. Respondent did not think that the vehicular traffic was a factor because he had officers in the vicinity and in the intersection and the traffic was moving slowly. Respondent testified that he was not worried about vehicle traffic "because I'm taking him across the street and I'm going with him." He did not have a concern that Mr. Williams was going to be struck by a vehicle. (Tr. 146, 170) Mr. Williams did not stumble or fall at all. Once he got Mr. Williams to the east side of Madison, Respondent did not follow him onto the sidewalk. (Tr. 149, 171)

Detective Lombardi came over to Mr. Williams and told him to move on. From Respondent's vantage point it seemed like Mr. Williams had knocked Detective Lombardi's hand and was



talking to him in an aggressive manner so Respondent arrested Mr. Williams for disorderly conduct. (Tr. 151)

On cross-examination, Respondent stated that when he first went to move Mr. Williams across Madison, he had no idea if the traffic light was red or green but he did see cars moving on Madison. Respondent agreed that it was fair to say that since he saw cars moving that pedestrians did not have a green light to cross Madison at that time. (Tr. 152-53) He also acknowledged that a light change could take thirty seconds but he did not wait for any light change before he guided Mr. Williams into the street. Respondent also was not sure if he had heard Officers Hernandez and Reyes in their conversation with Mr. Williams while on the southwest corner of Madison and 81<sup>st</sup> that he could go north, south or east. A portion of Respondent's CCRB interview was read to him wherein he said that Mr. Williams was told that he could go north, south or east. (Tr. 155-58)

During cross-examination, Respondent also testified that he did not consider that he had pushed Mr. Williams but acknowledged he applied force to Mr. Williams to move him in the direction of the east side of Madison. (Tr. 160-61) Respondent also acknowledged that when he was guiding Mr. Williams across Madison, there was no one walking in front of Mr. Williams and that Respondent was walking behind him and was not telling cars to slow down or using hand movements to tell them to stop. (Tr. 162-63)

There were video clips of portions of the incident entered into evidence. CCRB Ex. 1A shows the portion of the incident where Respondent first holds Mr. Williams's arm and starts to move him across Madison. It is clear that traffic is moving on Madison and that the Do Not Walk symbol is lit up. On CCRB Ex. 1C, Respondent is visible on Madison at approximately five seconds and again at 14 through 26 seconds when Mr. Williams is across Madison. CCRB

Ex. 1D picks up portions of the incident when Mr. Williams is in Madison after Respondent's pushes to his back.

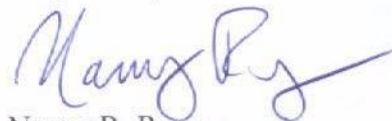
Respondent is charged with one specification of pushing Mr. Williams without police necessity. I find that the preponderance of the evidence shows that Mr. Williams was not complying with directives to leave the area of the funeral home. He was continuing to stand in the area in front of the home after being directed to leave, first when he was on the southwest corner of 81<sup>st</sup> and Madison, and then again on the northwest corner of 81<sup>st</sup> and Madison. Mr. Williams acknowledged in his testimony that he knew the officers were trying to clear the area and that he did not move at one point after being told to do so. I also find Respondent and the other officers credible in their testimony that due to the large crowd in the area there was a police necessity to clear the area in front of the funeral home at the time of the incident. If a person was not complying with police directives to clear what could easily have become a dangerously crowded area, Respondent had the right to place his hand on Mr. Williams's arm as he did to guide him away from the area. The pushes that Respondent used when Mr. Williams appeared to refuse to leave the area as directed could also be deemed an acceptable level of force in the situation. The complicating factor in this case, however, is that the traffic was moving at the time Respondent pushed Mr. Williams further into the path where cars were still moving along Madison Avenue. Fortunately, Mr. Williams did not sustain any injuries while crossing Madison. While Mr. Williams may have needed to be guided, or even eventually pushed across Madison, to alleviate the potentially dangerous crowd situation, there is nothing in the record to indicate he had to be pushed at the precise time that traffic was moving, therefore making the two pushes used by Respondent at the specific time he used them to be unnecessary police action. Respondent is therefore Guilty of Specification 1.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

CCRB did not make any specific penalty request during the course of the hearing. I find that while Respondent is Guilty of using unnecessary force, this conclusion is based solely on his timing of the use of force, and as there was no injury in this case, an appropriate penalty would be a Reprimand.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials







## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT KEVON SAMPLE  
TAX REGISTRY NO. 935679  
DISCIPLINARY CASE NO. 2018-18426

Respondent was appointed to the Department on July 1, 2004. On his last three annual performance evaluations, he received a 4.5 overall rating of "Extremely Competent/Highly Competent" in 2018 and twice in 2017. He has received 12 medals for excellent police duty and four medals for meritorious police duty.

[REDACTED]

In 2016, Respondent forfeited 20 vacation days for (i) being absent from work for over two hours and (ii) failing to prepare a leave of absence report. In connection with the instant matter, Respondent was placed on Level 1 Force Monitoring for receiving charges and specifications. Monitoring remains ongoing.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials